IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7200 OF 2005

Shri Krishnamoorthy Chandran ...Applicant

Versus

M/s.Ind Bank Merchant Services Ltd. and Anr. ...Respondents

Shri Shirish Gupte, Senior Advocate for the Applicant.
Ms Mohana Nair for the Respondent No.1.
Shri S.V.More, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 29, 2006.

P.C.:

1. By the order dated 14th December, 2005 notice for final disposal has been already issued by this Court. I have heard the learned senior counsel appearing for the Applicant. I have also heard the learned counsel for the first Respondent and the A.P.P for the State. The Applicant is the accused No.3 and the first Respondent is the complainant.

2. The first Respondent filed a private complaint against the Applicant and a Company- The Pharmaceutical Products of India Limited in the court of the Metropolitan Magistrate, Mumbai alleging commission of offences under section 420 and/or 406 read with

sections 465, 467, 468, 471 read with section 34 of the Indian Penal Code. On the said complaint, the learned Magistrate passed an order under section 156(3) of the Code of Criminal Procedure, 1973. On the basis of the said order, F.I.R was registered and investigation was carried out.

3. The learned senior counsel has invited my attention to proceedings under section 391 of the Companies Act, 1956 taken out in this court at the instance of the Company-The Pharmaceutical Products of India Ltd which is arraigned as accused No.1 in the complaint filed by the first Respondent. He has also invited my attention to a tripartite agreement for settlement executed by the said Company, the first Respondent and M/s Wanburry Limited. The said agreement refers to schemes of arrangement with the lenders filed in this court under section 391 of the Companies Act, 1956. Clause No.7 of the said Agreement reads thus:

> "7. Upon execution of this Agreement and upon receipt of the initial consideration of Rs.6.33 lacs as in para 1 above and the other

valuable considerations to be received and having been satisfied about the workable solution to the outstanding disputes as contemplated in this Agreement, Indbank agrees that there will not be any substance in the allegations made by it in the criminal complaints civil proceeding filed before any court/authorities. Accordingly, Indbank assures PPIL, its Directors, officers, that it will cooperate with them for not pursuing those actions and also support them in the legal proceedings initiated by them to get themselves relieved of such civil/criminal proceedings, complaints/or any other action in law for the recovery of their alleged dues. To this extent, Indbank agrees to sign such documents, applications/petitions as may be necessary and extend full cooperation to PPIL/Wanbury in achieving the aforesaid objective".

4. The learned senior counsel, therefore, submits that the criminal proceedings be quashed by exercising powers under section 482 of the said Code. The learned

counsel appearing for the first Respondent (original complainant) has no objection for adopting the said course in view of the agreement referred to above. I have also heard the learned A.P.P appearing in the matter.

5. I have considered the submissions. Perusal of the complaint filed by the first Respondent shows that it arises out of a commercial transaction between the parties. The first Respondent extended hire purchase finance facility to the accused No.1- Company. Now there is a complete settlement between the parties which is reduced into writing in the form of Agreement of Settlement which is referred to above. Therefore, continuation of criminal proceeding will not serve any purpose and it will cause sheer harassment to both the parties. Considering the nature of the allegations made in the complaint and in the F.I.R, this is a fit case for exercising power under section 482 of the said Code.

6. Hence, I pass the following order:

. Rule is made absolute in terms of prayer clause

(b).

JUDGE